

# **EXHIBIT K**

## **RESERVE ACCOUNT FOR FACILITIES IMPROVEMENT**

### **A. INTRODUCTION**

This exhibit concerns the use of the RAFI funds. Funds set aside in a RAFI are referred to as RAFI funds. The source of these funds is established in the main body of the concession contract, section 4. In the event of any inconsistency between this Exhibit K and the main body of the concession contract, the main body of the concession contract shall prevail.

### **B. POLICY FOR USE OF THE RESERVE ACCOUNT FOR FACILITIES IMPROVEMENT**

The concession contract includes specific provisions establishing a RAFI and describes its purpose or principal goals. The account is needed to make funds systematically available for the ongoing improvement, construction, and renovation of concession facilities, specifically, significant nonrecurring capital improvement projects. The RAFI allows reserves to be set aside for known requirements even while exact projects, construction timing, and planning are not yet resolved.

The RAFI shall be used to improve, rehabilitate, or construct facilities that are Government or Concession Contractor funded and assigned to the Concession Contractor to directly support Concession Contractor services authorized or required under this concession contract.

### **C. APPROPRIATE FACILITIES**

RAFI funds may be used only to fund Concession Contractor visitor service and concession facility projects constructed on Federal estate lands assigned to the Concession Contractor for use in maintaining the visitor services and concession facilities authorized by the concession contract such projects are referred to as RAFI projects. Expenditures for projects on other lands or for other purposes are a violation of the concession contract and unlawful. The RAFI projects, as established in this concession contract, are considered concession contract obligations.

Examples of appropriate facilities would include marinas, marina slips, marine fuel service facilities, campground pads and utilities, trailer and recreational vehicle pads, lodging, restaurants, gift shops or service stations, as well as support facilities necessary for the functioning of the concession's primary visitor facilities such as utility systems, administrative offices, and repair shops.

### **D. ACCOUNT INSTRUMENTS AND OWNERSHIP**

RAFI funds can be invested in various instruments in advance of being used to carry out the Concession Contractor's obligations under the concession contract. The parties to

this concession contract Exhibit K agree that RAFI funds that have yet to be disbursed shall be either held in an account insured by the Federal Deposit Insurance Corporation or a similar insuring entity of the Federal Government, and/or all investment instruments, which shall be notes, bills, and bonds issued by the United States Treasury, that will be whole instruments including both principal and interest (no derivative instruments) and shall be directly backed by the full faith and credit of the United States of America.

The funds in the RAFI will be held in accounts established and owned by the Concession Contractor to carry out Concession Contractor obligations under this concession contract. Trust and escrow accounts are not permissible. The Concession Contractor makes an irreversible commitment when deposits are made into a RAFI. Deposited funds do not become Government funds. Interest earned on RAFI funds becomes RAFI funds. The Concession Contractor is responsible for taxes owed on such interest. RAFI funds cannot be used to pay such taxes.

Any RAFI funds not duly expended by the Concession Contractor by the expiration of this concession contract shall be the property of the Concession Contractor unless there are approved or otherwise Reclamation required RAFI projects previously identified for completion in advance of contract expiration that have not been accomplished. In this case the projects estimated costs will be transferred from the remaining RAFI account to the next concession contractor for application to those projects. If the Concession Contractor is also the succeeding concession contractor then the RAFI funds that are unexpended during the term of this concession contract will apply to the initial RAFI funding established in the next contract less the estimated costs of uncompleted but required projects.

In the event of termination of this concession contract, any unexpended RAFI funds shall become the property of the Concession Contractor unless there are approved or otherwise Reclamation required RAFI projects previously identified for completion at the date of contract termination that have not been accomplished.

## **E. ACCOUNT REPORTING**

RAFI funds must be maintained in a separate account, with record keeping used to maintain continuous records of the balance as well as deposits to the account and disbursements from the account. Concession Contractors are responsible for reporting RAFI activity as required by Reclamation and described in Section 8 – Accounting Records and Reports, in the main body of the concession contract and in Exhibit J: Financial Reporting Forms.

The Concession Contractor shall submit to Reclamation monthly, no later than 30 days after the end of each month a RAFI Activity Report that provides a summary of deposits and expenditures over the previous month. This report should also contain a running summary of all funds currently available in the RAFI. The format of this report is to be developed between Reclamation and the Concession Contractor with Reclamation having the final determination. Once the form is developed it will become an attachment to this Exhibit K. The Concession Contractor is required to follow the monthly RAFI activity report form in this Exhibit K without alteration and without modifications.

## **F. ACCOUNT EXPENDITURES THAT ARE NOT APPROPRIATE**

RAFI funds shall not be used for the operating costs of building systems or for minor adjustment and repair that would be the usual, routine responsibility of the Concession Contractor. RAFI funds shall not be used for cyclic maintenance projects with a normal recurrence interval of less than 7 years.

Additionally, RAFI funds are not to be used for maintenance of, or improvements to, Government property not assigned to the Concession Contractor, or for Government projects or activities not directly related to the provision of the involved Concession Contractor's services.

RAFI funds are not to be used to pay for or otherwise reimburse the Concession Contractor for annual operating expenses or Government appropriation accounts.

RAFI funds will not be used for acquisition, lease, or maintenance of personal property. With the exception of built-in refrigeration units in kitchen facilities, all kitchen equipment shall be considered personal property and not eligible for RAFI expenditures. Examples of the type of other personal property that is not appropriate for RAFI expenditures include, but are not limited to, vehicles and vessels, houseboats, barges, personal watercraft (like jet skis), motor boats, sailboats, tour boats, paddleboats, canoes, kayaks, windsurfing equipment, dinghies, rowboats, parasailing equipment, horses, bicycles, motorbikes, snowmobiles, personal vehicles, buses, trucks, vans, and vending machines.

The account shall not be used to replace individual fixtures, doors, windows, or pieces of equipment (e.g., window air conditioning units) regardless of whether they are damaged by use or vandalism or have deteriorated as a result of normal operations.

The account shall not be used for decorating costs, furniture, interior painting, or periodic re-carpeting or other necessary cosmetic work. RAFI funds shall not be used for cleaning, housekeeping, groundskeeping, regular landscaping care, or similar routine upkeep activity. RAFI funds shall not be used for seasonal opening and closing costs.

## **G. APPROPRIATE ACCOUNT EXPENDITURES**

Project activities that are appropriate for RAFI fund expenditures include project planning, design, and construction of new buildings and infrastructure, renovation or rehabilitation of existing buildings and related infrastructure, demolition of old facilities, footprint and landscape design, and site restoration. Appropriate RAFI fund expenditures would include major capital expenditures in Government-owned structures/facilities that are assigned to Concession Contractors for the purposes of their use. The following list identifies some but not necessarily all of applicable expenditures:

- Foundations.
- Building frames.
- Window frame replacement.
- Sheathing.
- Sub-floors.

- Drainage.
- Renovation of building systems (electric, plumbing, HVAC, roofing, etc.).
- Additions (buildings, walkways, docks, etc.).

Certain attached fixtures used by the applicable facilities would be considered appropriate for RAFI fund expenditures, for example:

- Water heaters.
- Compressed air tanks.
- Fuel storage tanks.
- Hoists and equipment.
- Vault and composting toilet facilities.
- Others on a case by case basis.

The Concession Contractor may, with the approval of the Contracting Officer, be allowed to charge the RAFI fund for reasonable administrative expenses directly associated with the implementation of Concession Contractor Improvements. Such expenses, however, will not exceed 5 percent of approved project expenditures. Before allowing such expenses, they must be approved, in writing, by the Reclamation Contracting Officer, who shall determine the reasonableness and appropriateness of such expenses. Such approval shall be based on the Concession Contractor's submission of a detailed listing of the administrative costs it expects to incur and those it seeks to fund through the RAFI.

## **H. PROJECT CONTRACTS**

The contracts entered into by the Concession Contractor (or others, should that be authorized) to undertake projects are private contracts, not Government contracts, and are issued at an arm's length to obtain the best contract price possible. The Concession Contractor shall not, directly or indirectly, enter into any arrangement or agreement whereby it receives money or other benefits from the contractor.

The Contracting Officer may require that the RAFI funds be used to pay for the cost of an independent, third-party construction supervisor/inspector to represent the interests of the Government on any project in which the Contracting Officer feels such a supervisor/inspector would be cost effective and necessary to the sound administration of the project.

The Concession Contractor shall ensure that a Builders' Risk Form insurance policy is in effect during the construction. The Contracting Officer will approve, in writing, the type and amount of insurance. This policy is an appropriate expenditure from the RAFI funds.

## **I. PROJECT NOMINATION AND APPROVAL**

1. Spending money from the RAFI requires a coordinated effort between the Concession Contractor and the Reclamation Contracting Officer. Projects must be proposed, prioritized, approved, bid, and accomplished using the orderly process described below to ensure accountability.

2. Reclamation staff, the Concession Contractor, or both may submit proposals to the Contracting Officer for the use of the RAFI funds using a format established by the Contracting Officer.
3. The Contracting Officer will establish an account committee to review and recommend approval or disapproval of project nominations in accordance with the Annual Improvement Management Plan and Exhibit H. The committee will include at least Reclamation's concession management person and other staff members deemed appropriate by the Contracting Officer. The chair will be the Reclamation lead concession operative unless a different appointment is made by Reclamation. The Contracting Officer will establish a process to review, prioritize, and approve or disapprove project nominations based on, but not limited to, the following:

Applicable laws and regulations.

Reclamation's Concessions Policy and Directives and Standards.

Concession contract and amendments, including the appropriateness of the project given the RAFI fund restrictions stated in this exhibit.

Operating Plans, Maintenance Plans, and Annual Improvement Management Plans.

Need, based on resource impacts or human risk factors.

Compliance with Reclamation planning documents.

Other applicable factors.

Upon completion of the review, the committee will prepare a record of the evaluation and a recommendation for approval or disapproval by the Contracting Officer. The documentation will be included in the proposal format established by the Contracting Officer.

4. The Contracting Officer will approve project nominations.
5. The Contracting Officer will authorize each project in a written letter to the Concession Contractor. The letter will establish a project account number and set a not-to-exceed budget amount. The established budget may be increased only by subsequent written authorization by the Contracting Officer. The budget amount will include all direct project hard and soft costs, such as design, construction, material purchases, environmental compliance reports, environmental mitigation, contingencies, and construction inspection. The project statement will provide a chronological audit trail of the decision-making activity, including meetings, inspections, and change orders, from nomination to project completion. Support documents will be maintained in the project file or referenced in the project statement.

## **J. SPECIFICATIONS, DESIGN, AND BIDDING**

1. Work funded by a RAFI account is to be accomplished through competitive contracts or as described below. The Concession Contractor shall assume responsibility, including liability for any RAFI funded contracts awarded but not completed by the previous Concession Contractor pursuant to this concession contract.
2. Concession employees will not perform construction work unless the Contracting Officer determines that there are circumstances that make such work advantageous and that it would be effectively managed. Concession Contractors may use sole-source contracts only with the prior approval of the Contracting Officer.
3. The Concession Contractor may not bid as an independent contractor or be employed by the contractor for RAFI-funded projects within their own concession contract.
4. The Concession Contractor shall not directly or indirectly enter into any contract whereby it benefits directly or indirectly through the transfer of funds or other benefits from a RAFI project contractor conducting work within the bounds of the Concession Contractor's concession contract.
5. Exceptions to these policies may be granted, in writing, by the Contracting Officer on a case-by-case basis when there are unusual circumstances, clear advantages to the Government, and adequate controls.
6. The Contracting Officer will approve a project scope of work before the Concession Contractor begins project design.
7. Design work will typically be accomplished by an architect, engineer, or other design consultant hired by the Concession Contractor. The Contracting Officer will approve the Concession Contractor's selection of the design consultant.
8. Plans and specifications will be prepared by the Concession Contractor or the Concession Contractor's design consultant. When design is involved in a project, the designs will be reviewed by the Contracting Officer as appropriate to the project and as specified in Exhibit H. Sufficient time should be allowed for design review by appropriate Reclamation staff at area, regional, or technical service center offices or by independent consultants.
9. Once plans and specifications are approved, the Concession Contractor will prepare to advertise or otherwise solicit bids for the project.
10. For each project, the package for bidding will include at least the plans and specifications and a draft contract or agreement under which the work will be carried out and that has been reviewed and approved by the Contracting Officer. If lodging and/or meals are provided by the Concession Contractor as part of the contract, the contract must include this provision and rates.

11. If the project is bid, the Concession Contractor will receive, open, and evaluate project bids.
12. The Concession Contractor will recommend and justify selecting a contractor from among the bidders or from other sources if a bid process was not used. This recommendation will be accepted or rejected, in writing, by the Contracting Officer. Once confirmation has been issued, the Concession Contractor is authorized to sign a contract and proceed with the project.
13. Change orders on project contracts require approval, in writing, from the Contracting Officer.
14. Upon certification from the contractor that a project is complete, the project will be inspected jointly by the Concession Contractor and the Contracting Officer. The project will not be accepted by the Concession Contractor until authorized in writing by the Contracting Officer.
15. Upon project completion, the Concession Contractor will submit to the Contracting Officer a project completion report, including total project costs, warranties, service manuals, other similar documents, and as-built drawings of the project in the form specified. Invoices, certificates, and other documentation related to the final segment of work accomplished shall accompany the report and be the basis for final payment to the contractor. Final payment to the contractor shall not be made until the project has been accepted, in writing, by the Contracting Officer.

## **K. INITIAL ESTABLISHMENT OF RAFI ACCOUNT**

The Concession Contractor shall establish and deposit into a RAFI, within 15 days after signing the contract, a sum equal to \$10,000 (Ten Thousand Dollars). This amount will serve as an initial working balance and will offset amounts due in the initial quarterly payments until an amount equal to this initial amount has been covered.

**[Place holder for “MONTHLY RAFI ACTIVITY REPORT FORM” as discussed in Section E preceding in this exhibit.]**

**Exhibit K Approved Effective:** \_\_\_\_\_

**UNITED STATES OF AMERICA**

By: \_\_\_\_\_

Contracting Officer, Bureau of Reclamation

**CONCESSION CONTRACTOR**

By: \_\_\_\_\_

Title: \_\_\_\_\_